

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1585 OF 2005

JIK Industries Limited & Ors. ...Petitioners

Versus

Ms Jenisha B. Mehta & Anr ...Respondents

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Ms. M.V. Thakkar h/f Mr. S.V. Thakkar, Advocate
for Petitioners.

Mr. Indranil Joshi h/f Mr. D. Gujral for
Respondent No.1.

Ms. S.V. Gajare, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 21ST JUNE, 2005

P. C.:-

1. Heard the learned advocate for the petitioners, the learned advocate for respondent No.1 and the learned A.P.P. for the State.

2. The petitioners are seeking quashing of process issued against them under Section 138 r.w. 141 of Negotiable Instruments Act. The said process has been issued in C.C. No. 775/S/2004 which is pending before the learned Metropolitan Magistrate, 30th Court, Kurla, Mumbai.

3. Two main contentions have been raised by the

learned advocate for the petitioners. The first contention is that petitioner Nos. 3 and 4 had resigned as Directors of the company much before the issuance of the cheque in question. Thus, it is contended that as far as the respondent Nos. 3 and 4 are concerned they were not Directors of the company at the relevant time. In support of this contention, reliance has been placed on Form 32 which is annexed at Exh.N and N-1 to the petition. In the case of **Rajlakshmi Mills Vs. Shakti Bhakoo**, reported in **(2002) 8 SCC 236**, the High Court had quashed the proceedings on the assumption that the petitioner therein was not in charge or responsible for the conduct of the business of Company. The Supreme Court has observed that "We are of the opinion that at the stage of summoning when evidence was yet to be led by the parties, the High Court could not on an assumption of facts come to a finding of fact that the respondent was not responsible for the conduct of the business. On this ground alone, these appeals are allowed and the impugned decision of the High Court is set aside".

4. In the case of **State of Madhya Pradesh Vs. Awadh Kishore Gupta & Ors.** reported **(2004) 1 SCC 691**, the Supreme Court has observed that in matters under Section 482 of Cr.P.C. annexures to the petition cannot be termed as evidence without being tested and

proved and hence, these annexures should not be relied upon by the High Court. So also in the case of **Smt. Chand Dhawan Vs. Jawaharlal and Ors (1992) 3 SCC 317**, it has been held by the Supreme Court that the High Court should not act on annexures to the petition where such documents are not admitted or accepted by the complainant. It may be stated here that the learned advocate for the respondent i.e. original complainant disputes that these two petitioners have resigned on the said dates.

5. As far as the petitioner No.2 is concerned, it is an admitted fact that he is a Director even today and that he has signed the cheque in question. However, in respect of petitioner Nos. 2, 3 and 4 it is contended that there was no legal liability. Reliance has been placed on various Annexures i.e. Exh.D to Exh.J as well as Annexure at Exh.M to the petition. These annexures have been relied upon in support of the contention that these documents show that no legal liability existed and hence, it cannot be said that the petitioners are involved in the case under Section 138 r.w. 141 of Negotiable Instruments Act.

6. The learned advocate for the petitioners also relied upon two decisions, i.e. in the case of **R. Sreenivasan Vs. State of Kerala and Anr** decided on

11.10.1999 and another decision of the Single Judge of this Court in the case of **Kishore S. Singapurkar Vs. State of Maharashtra & Ors. (Writ Petition No.2096 of 1999)** decided on **24.4.2003**. However, the decisions which have been discussed in above paras are the decisions rendered by the Supreme Court. Obviously, I would be bound by the decisions of the Supreme Court.

7. In view of the observations of the Supreme Court in various decisions cited above, I am of the opinion that at this stage no reliance can be placed on the documents annexed to the petition. In this view of the matter, I do not find any merit in the present petition and the petition is dismissed.
